

# Congressional Concern Causes New Emphasis on an Old Process: NEW START NOTIFICATION

by Mr Thomas McLemore



Until recently the Department of Defense (DoD) enjoyed a fair amount of leniency with regard to new start notification procedures. Congress allowed the Air Force to conduct business with the understanding that they would be notified in the event of a new start. While not violating any regulations, the Air Force provided informal notification on what we considered a new start. Not any more. The reins have been pulled in and Congress is cracking down on potential violations. So serious are they that in their FY99 and FY00 Department of Defense Appropriation Bills (P.L. 105-262 and P.L. 106-79, respectively) they chastised the Air Force for its failure to formally notify and allowed for punitive punishment against those responsible.

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Congressional notification of a new start is not a new responsibility. It has been an element of the DoD Financial Management Regulation (7000.14-R, Vol 3, Chapter 6) in one form or another since the 1950s. So why the recent commotion? Truthfully, we brought it on ourselves. The Air Force, over the past few years, has periodically failed to provide Congress formal notice before initiating new starts. By failing to do so, we undermine the most important concept of the checks and balances established by our founding fathers; that of separation of power. The Executive Branch does not determine how taxpayers' dollars are spent, that is solely the job of Congress. While the degree to which this happens has been the cause of much debate for many years, the facts remain the same—Congress has the Constitutional right to know, even direct, where the Air Force spends its money. Whether it was an oversight, an attempt to forego the sometimes greater than two-month waiting period, or simply a mistake, the Air Force neglected its responsibility. The New York Times reported in its 22 July 1999 edition that the Pentagon defied the law and the Constitution by spending hundreds of millions of dollars on military projects that lawmakers never approved—[C]ommittee staff members said these practices were a chronic and worsening problem adding up to billions of dollars spent improperly and illegally over the past decade. As a result, Congress requested the Secretary and Chief of Staff of the Air Force explain, in person, why this happened; and rest assured that despite the scenic ride across the Potomac River, it was not a pleasant trip.

After the negative press report and Congressional concern, the Assistant Secretary of the Air Force (Financial Management & Comptroller) and the Assistant Secretary of the Air Force (Acquisition) di-

rected the formation of a task force to undertake the issue. The New Start Task Force, headed by Ms Pat Zarodkiewicz, Director of Budget Investment, was convened in August of 1999. Comprised of representatives from SAF/AQ/FM/GC/IG, AF/IL/XO/XP, and the Air Force Audit Agency (AFAA), their charter was simple; develop detailed guidance, policy, and procedures for those in the field facing these critical decisions. How do I know if it is a new start? What is the process if it is a new start? How do we get the word out? How do we measure our success? These were the questions that the Task Force prepared itself to answer.

On 2 December 1999, Ms Zarodkiewicz presented the team's plan to the Secretary of the Air Force, F. Whitten Peters, and he approved.

How do I know if it is a new start? As defined by the Office of the Under Secretary of Defense, Comptroller, a new start is any program, subprogram, modification, project or subproject not previously justified by the Department and funded by the Congress through the normal budget process. Congress, in their 1999 House Appropriations Committee Conference Report (House Report 105-591) identified new starts as pertaining to specific appropriation line-items and include any new programs, projects, subprojects, or modifications that were not disclosed to Congress in the justification material. These definitions indicate efforts justified in the President's Budget (PB) or Congressionally added to an appropriation are not considered a new start. Simply put, if Congress does not know about your efforts in a certain appropriation, then consider it a new start. Note the phrase in a certain appropriation. If the effort you are about to start is being accomplished in another appropriation (in either your department or elsewhere), then Congress must still be notified.

While Operations and Maintenance (O&M), Military Construction, Military Family Housing, and the Military Personnel Account (MPA) may seldom, if ever, find themselves in a new start situation due to the nature of each appropriation, it is important to note that both Congress and OSD have remained open to the possibility of such an occurrence. However, such a program would be a rather large, highly involved program that would more than likely only be undertaken at Headquarters Air Force.

There are some gray areas where it is not quite so clear. For instance, changes in program content or acceleration into an earlier fiscal year should be treated as new starts. Take these two real life scenarios for example:

**C-5 Modernization**—The modernization of the C-5 started with Phase 1, High-Pressure Turbine Replacement (HT-90) and Avionics Modernization Program (AMP). Phase 1 was to be the baseline for the entire modernization effort. Studies to determine the requirements for a proposed Phase 2 began in FY99 after funding was obtained by below threshold reprogramming. It was believed that these studies were justified under Phase 1 because that was the baseline for the entire modernization effort. They were not, however, and the Air Force never formally notified Congress of the new start Phase 2 studies. Formally is the key word here. The Air Force provided updates to professional Congressional staffers during the annual Staffer Day briefings regarding the acceleration of the C-5 AMP. However, as Secretary Peters states in his New Start Video, such informal notice does not get to members of the Appropriations Committee staffs and does not discharge our Constitutional obligations.

## What is a New Start?

- As defined by USD(C), a new start is any program, subprogram, modification, project, or subproject not previously justified by the Department and funded by the Congress through the normal budget process.

- House Report 105-591 identified new starts as pertaining to specific appropriation line-items and include any new programs, projects, subprojects, or modifications that were not disclosed to Congress in the justification material.

New Start Notification (Continued...)

Aircrew Laser Eye Protection (LEP)—This joint Air Force/Navy program was identified in the Air Force justification material as beginning in FY00, after a two-year hiatus. However, its priority was increased and work began in FY99. Even though it was justified to Congress for FY00, we failed to notify them that the effort had been accelerated into FY99.

Not all cases result in a program requiring new start notification. If your program runs longer than expected and consequently reaches into the next fiscal year, this is merely an extension of the effort and therefore not a new start. However, the main point we want to emphasize is if you are unsure, then ask the question. It is much better to err on the side of caution rather than fiscally obligate the Air Force without the proper Congressional notification.

What is the process if it is a new start? Those in the field will have the first opportunity to identify a new start. Therefore, they are our first line of defense. As such, a New Start Validation Form (Figure 1) is now required prior to the obligation of funds in the RDT&E and procurement appropriation. The System Program Director and the Program Control Chief will sign the form. They must validate one of four statements before contracting action can begin: (1) the program was budgeted and appropriated for, (2) the program was a congressional add, (3) the program is a new start but the proper congressional notification has taken place (attach funds release document), or (4) HQ USAF has advised that new start notification was not required (attach documentation).

Figure 1 - New Start Validation Form

In accordance with AFI 63-101, I have validated the following prior to approving this contracting action (one of the following must be answered yes):

	Yes	No
1. Program was budgeted and appropriated. Effort was budgeted in the President's Budget Submission and is consistent with program direction provided by Defense Appropriations Conference language and/or marks. Fiscal year of President's Budget Submission must match fiscal year of funds being used. This effort is not a new start.		
2. Program was a Congressional add. Effort was not requested in the President's Budget Submission, but funds were appropriated by the Defense Appropriations Conference and effort is consistent with program direction provided by Defense Appropriations Conference language and/or marks. Fiscal year of marks must match fiscal year of funds being used. This effort is not a new start requiring Congressional approval. SAF/AQX or AF/ILS Program Authorization attached.		
3. Program is an out-of-cycle New Start. Effort is an out-of-cycle new start for which Congressional notifications/approval has been accomplished as reflected on the Secretary of the Air Force funds release document. SAF/AQX or AF/ILS Program Authorization attached.		
4. HAF has advised that new start notifications are not required (documentation attached).		

System Program Director

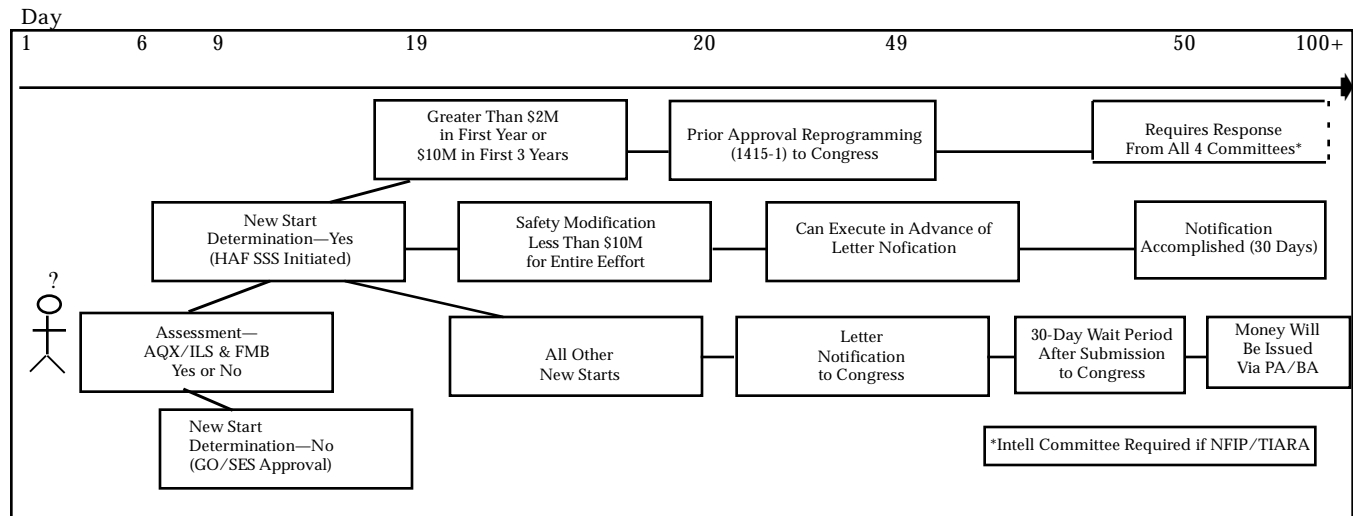
Program Control Chief

Department of Defense Appropriations Act, 2000, Public Law 106-79 Sec. 8096. None of the funds in this Act may be used to compensate a DoD employee who initiates a new start program without notification to OSD and the Congressional Defense committees, as required by DoD financial management regulation.

Always being able to validate statement one or two would make for an easy process. If the effort is clearly identified in the justification material or if it was a Congressional add then you have satisfied statement one or statement two, respectively. As written, statement two is tough to get around; Congress either gave you the money or they didn't. However, statement one poses more of a dilemma. Let's say the effort does not exactly fit the justification material or you feel it is too open for interpretation; then what do you do? Ask the appropriation manager. When a new start question arises, together with their division chief (GS-15/Col level), the appropriation managers will make a decision based on the description of the effort and the supporting justification documentation for the program. "Maybes" and "no consensus" will be elevated to the directorate (SES/GO level). In all cases, if you ask the question, you will receive an official response. This response (most often a funds release or Staff Summary Sheet), should be attached to the New Start Validation Form, which is then stored with the contract. If determined to be a new start, then SAF/FMB will work with the functional office to prepare and submit the appropriate paperwork. Once Congress approves, you may proceed having satisfied statement three of the New Start Validation Form. If the effort is determined not to be a new start by HAF, then statement four is satisfied.

Once an effort has been declared a new start, Congress has to be notified. All new starts, regardless of dollar amount, require notification. However, OSD notification procedures vary based on the magnitude of funding. The general rules are these: (1) any new procurement line item, procurement program, procurement subprogram, modification (except for safety modifications less than \$10 million), RDT&E program element, RDT&E project or RDT&E subproject with an anticipated first year cost exceeding \$2 million or \$10 million over the first three years requires a prior approval reprogramming action notification (DD 1415-1), (2) any program not otherwise requiring prior approval action requires a letter notification, in advance of initiating, and (3) safety modifications costing less than \$10 million may be initiated in advance of Congressional notification. (See Figure 2)

Figure 2 - Congressional Notification Decision Tree



How do we get the word out? Numerous efforts were developed to ensure that we created awareness, educated, and reached all those involved in these types of decisions. To begin, a policy letter signed by Secretary Peters emphasized the importance of the matter. Updates to AFIs 23-205 (Managing the Procurement Material Programs), 63-101 (Acquisition System), and 65-601V1 (Budget Guidance and Procedures) and AFFARS Part 5332 followed.

The next effort, which you may have attended, was the road show. A multifunctional team, composed of task force members, traveled to more than a dozen locations giving a mandatory training session. The session consisted of a brief video by the Secretary of the Air Force explaining the importance and far reaching implications of this matter. Following the video, the team delved into the legal basis and Congressional interest of the matter. Next came new policies and procedures, finishing with a number of case studies. A CD-ROM/Web-based training module is in the works as a more permanent training method. In conjunction with the web-based training, a new start home page has been created. Located at the SAF/FM web site, it provides a centralized location where policy letters, AFI updates, briefing slides, even the Secretary's video can be found. The direct URL address for the web site is <http://www.saffm.hq.af.mil/FMB/FMBI/newstarts/newstarts.shtml>. Or you can go to the SAF/FM web site at <http://www.saffm.hq.af.mil>, click on the FMB tab at the top, then on FMBI Items of Interest at the left of the screen (or under SAF/FMB Directorates you can click on SAF/FMBI). From there, click on New Starts Home Page to enter. (Note: these addresses are case sensitive.)

The final efforts comprised of increasing awareness at various financial and program reviews. These included Spring Execution Reviews, Investment Budget Reviews, Program Executive Officer Reviews and Portfolio Reviews. We included articles in such professional publications as The Air Force Comptroller and the AQ Newsletter. Training slides were posted on SAF/AQ/FM and AF/IL web sites. And we have, or intend to provide, training at the American Society of Military Comptrollers Professional Development Institute, Single Managers Conference, Acquisition Contracting Conference, Acquisition Logistics Reform Week, and Acquisition Law Conference.

How do we measure our success? The AFAA and IG developed an oversight and inspection regimen that would assure the Air Force is doing the best job possible. An IPT team, lead by the AFAA, reviewed the FY00 and FY01 President's Budget (PB) submissions. Doing this allowed the team to compare the FY00 budget request of the FY00 PB to the FY00 execution shown in the FY01 PB; the same process used by Congressional staffers to identify unreported new starts. The AFAA also established a Mid-Year Management Review to assess the training and review the reporting process. The IG focused their efforts after the AFAA reviews. Any negative findings by the AFAA would allow the IG to investigate where the break down occurred. Coupled together, the AFAA and IG provided a safety net that otherwise would not exist.

The New Start Task Force has come a long way in a short time. Word has gotten out and awareness is increasing. However, we do expect, and encourage, many questions to ensure no programs slip through the cracks. As Mr Hale, SAF/FM, states, the efforts and accomplishments of this task force mean nothing if we, the Air Force, fail to improve Congressional new start notifications. This cannot be done without the determination and dedication of our Financial Management, Acquisition, General Counsel, and Logistics personnel in the field. Their commitment to this program is essential for its success.

Although a few challenges still await the team, the battle they faced last September has been won; yet the war lingers on. We must be ever vigilant of our Air Force resources and their inherent responsibilities. If we aren't, Congress will take away our authority to initiate new starts and execute programs essential to the Air Force's mission.

HAVE A NEW START QUESTION?  
CALL YOUR FUNCTIONAL OR APPROPRIATION MANAGER.

Appropriation Managers:

3010 (Aircraft Procurement)—Mr Ron Nuss, SAF/FMBIZ, DSN 224-4642  
3011 (Munitions Procurement)—Mr Ron Wells, SAF/FMBIX, DSN 224-4644  
3020 (Missile Procurement)—Lt Col Delane Aguilar, SAF/FMBIX, DSN 225-0009  
3080 (Other Procurement)—Mr Ron Wells, SAF/FMBIX, DSN 224-4644  
3600 (RDT&E)—Mr John Uperti, SAF/FMBIZ, DSN 614-4603

Functionals:

SAF/AQXR—Ms Debbie Hughes, DSN 425-7241 (3010/3020)  
SAF/AQXR—Mr Frank Sosa, DSN 425-7209 (3600)  
AF/ILSR—Mr Jim McAllister, DSN 225-7707  
AF/ILSR—Ms Deborah Erickson, DSN 225-7030

Special Access Programs:

SAF/FMBMB—Ms Olga Crerar, DSN 224-1319

Policy:

SAF/FMBMM—Ms Marti Maust, DSN 225-0305



## About the Author



Mr Thomas McLemore is currently a Program Support Analyst for the Air Force Director of Budget Investment, Deputy Assistant Secretary (Budget). He has a BA in Mathematics from Washington College and is currently working toward his MPA at George Mason University. He is actively involved in the New Start Task Force acting as the facilitator. He is a recent graduate from the Palace Acquire Intern program, coming to SAF/FMBI from Dover AFB. He is also a member of the American Society of Military Comptrollers (ASMC).